IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH.

Civil Writ Petition No.7099 of 1996.

Date of decision:9-1-2008.

Satya Dev Rattan

...Petitioner.

Versus

The Managing Director and others.

...Respondents.

...

Coram: Hon'ble Mr.Justice K C. Puri.

...

Present: Mr. R. K. Joshi Advocate for the petitioner.

None for the respondents.

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K. C. Puri, J.

Judgment.

The petitioner is aggrieved by the award dated 18.1.1996 passed by the Labour Court, Ludhiana and in this writ petition,filed by him under Articles 226/227 of the Constitution of India, he seeks quashing of the same .

The necessary facts lie in a narrow compass as under:

The petitioner joined the Punjab State Ware Housing Corporation as Accounts Clerk on 3.5.1982 on 89 days basis and his tenure was extended from time to time by the Corporation. He worked with the Corporation for about 4 years but his services were not regularized. The

services of other employees were regularized. On 6.3.1985, the petitioner handed over the charge of stationery etc.to one Harbans Singh, Accounts Clerk and he met with an accident in which he received severe injuries including dislocation of his left thumb. He sent an application for leave for half day. At about 5 AM, on the directions of District Manager, Khanna, the petitioner handed over the keys to one Harbans Singh, Accounts Clerk, Khanna. The petitioner thereafter sent applications for grant of leave from 13.3.1985 to 16.3.1985 on medical grounds. After obtaining fitness certificate on 20.5.1985, the petitioner went to the office of District Manager, Khanna-II and made a request to allow him to join his duty but was not allowed to do so till 22.5.1985. A charge sheet dated 25.7.1985 was served upon the petitioner. The petitioner submitted his reply dated 7.8.1985 to the charge sheet. An enquiry was held against the petitioner.

It is further the case of the petitioner that he was not allowed to cross-examine the witness of the management. The Enquiry Officer submitted his report on 8.10.1985 in which it was held that the charges were proved against the petitioner. Thereafter the petitioner was served with a show cause notice requiring him to explain as to why the penalty of removal should not be imposed upon him. The petitioner submitted detailed reply to the said notice. Thereafter on 10.1.1986, the Managing Director, Punjab State Warehousing Corporation, Chandigarh passed order removing the petitioner from service. The petitioner filed an appeal before the Chairman, Punjab State Warehousing Corporation, Chandigarh who rejected the same vide order dated 21.3.1986. The petitioner submitted various representations but to no effect. Eventually, the petitioner served demand

notice dated 7.2.1992 upon the respondents. The Labour Court passed impugned award dated 18.1.1996 in which it was held that the termination of the services of the petitioner was justified.

The petitioner has challenged the impugned award on the ground that the enquiry was conducted against him with a prejudiced and biased mind; that he was not afforded any opportunity to cross-examine the witnesses; that there was no evidence to conclude that the absence of the petitioner was wilful and deliberate; that he never disobeyed the orders of the District Manager, Khanna; that he never received letter dated 12.4.1985 vide which he was informed that his leave had been rejected; that the Enquiry Officer failed to comply with Rule 8.8 of the Punjab Civil Services Rules,1970 in which it is provided that the charged official be asked that he can take the assistance of co-employee; that the impugned award is completely unreasonable,unfounded and non-speaking one and that the Labour Court did not take into consideration the fact that the punishment imposed upon him was extremely harsh and disproportionate to be alleged misconduct.

In the written statement, the respondents repudiated the claim of the petitioner. It is pleaded that the services of the petitioner were terminated on account of his wilful absence. The petitioner, being ad hoc employee, was removed from the service of the Corporation after affording him all possible opportunities. The respondents have supported the impugned award.

The petitioner moved an application under Section 151 CPC for directing the respondents to produce the file containing the order passed by

the Chairman on 17.1.1987. It is pleaded in the petition that the Chairman of the Corporation has accepted the appeal of the petitioner and ordered his re-instatement. This para has not been admitted nor denied but evasive reply has been filed. The order dated 17.1.1987 passed by the Chairman is required to be produced on the record by issuing directions to the respondents to produce the relevant file.

I have carefully considered the submissions made by the learned counsel for the petitioner, in this regard, but do not find any force in those contentions. The petitioner has contested the petition before the Labour Court by tooth and nail. There is nothing on the file that the Chairman has accepted the appeal of the petitioner. Reference of order dated 12.10.1987 made by the Minister has been mentioned in the application but no such order has been placed on the file. Otherwise also, the learned counsel for the petitioner could not point out any Rules under which the Minister has a right to interfere in the departmental proceedings. So, the above-said application for the production of documents is without any force and the same stands declined.

So far as the merits of the case are concerned, the learned counsel for the petitioner has submitted that Enquiry Officer appointed by the department was a Legal Advisor of the department and was a law qualified person. No defence official having knowledge of law has been provided to the petitioner and the petitioner has been prejudiced on that count.

I have carefully considered the said submissions but do not find any force in the same. The petitioner could have ventilated that grievance

before the department during the pendency of departmental proceedings but there is nothing on the file that any such objection was raised. Otherwise also, the petitioner has failed to lead any evidence on the file to reach at the conclusion that the petitioner has been prejudiced by the appointment of Legal Advisor as an Enquiry Officer.

The learned counsel for the petitioner has submitted that preliminary enquiry report has not been supplied to the petitioner and the petitioner has been prejudiced on that count. In order to support this contention, learned counsel for the petitioner has relied upon authority reported as **Hans Raj Gupta Versus State of Punjab,** 1992(1) SCT 258.

I have carefully considered the said submission but do not find any force in that submission also. Law, in this regard, is well settled. In case the petitioner is able to prove the fact that he has been prejudiced by the non supply of co[y of preliminary enquiry report, in that case, the departmental proceedings can be said to be vitiated, but, in the present case, there is nothing on the file that the petitioner has been, in any manner, prejudiced by the non supply of copy of preliminary enquiry report. So, the petitioner cannot derive any benefit from the authority in **Hans Raj Gupta's** case (supra).

The learned counsel for the petitioner has submitted that absence from duty does not attract harsh punishment of removal. To fortify his arguments, the learned counsel for the petitioner has relied upon authority reported as **Deputy Inspector General, Central Industrial Security Force Eastern Zone Versus Shib Kumar Ray,** 1995 (92) SCT 662.

I have carefully considered the said submission but this submission does not cut any ice before me. The petitioner was working on ad hoc basis. He made a false excuse of his illness regarding his absence. The Enquiry Officer came to the conclusion after appreciating evidence before him that the petitioner was not suffering from any ailment and was hale and hearty. That finding of fact cannot be interfered with in the writ jurisdiction. The petitioner was directed to appear before the C.M.O to prove the fact that he was actually suffering from any ailment but he did not comply with the said order. So, in these circumstances, the petitioner was not only absent from duty but has dis-obeyed the instructions by his employer. So, the authority reported in **Shiv Kumar Ray's** case (supra) does not come to the rescue of the petitioner. The petitioner was playing hide and seek with the employer and remained absent for a long period. So, it cannot be said that the punishment awarded to the petitioner is, in any manner, harsh.

The counsel for the petitioner has relied upon authority reported as **Ramphal Versus State of Haryana and another**, 1995(1) Recent Services Judgments 826 and on the strength of the same, it has been argued that under Sections 10 and 11-A of the Act, the Labour Court/Industrial Tribunal can scrutinize whether there is misconduct on the part of the workman.

I have carefully considered the said submission but do not find any force in the same. No doubt, the Labour Court can scrutinize whether there is any misconduct or not, but, in the present case, the Labour Court has come to the conclusion that the petitioner has misconducted. So, the

petitioner cannot take benefit of authority reported in **Ramphal's** case (supra).

Lastly, it is submitted that the District Manager was indulging in corruption and the petitioner has objected to his way of life. Departmental proceedings have been initiated by him in order to get rid of the petitioner.

I have carefully considered that submission but do not find any force in that submission also. There is nothing on the file to come to the conclusion that disciplinary proceedings were initiated by the District Manager in order to get rid of the petitioner. Proper procedure has been duly adopted in the departmental proceedings. So, no ground for interference in the writ petition is made out.

Consequently, the petition is without any merit and is dismissed.

January 9 , 2008. (K. C. Puri)
Jaggi Judge